IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.935 OF 2004

Shri Ravindra Madhav Saindansing, .. Petitioner.

Vs

1. Maharashtra Jeevan Pradhikaran

and anr. .. Respondents.

Mr Sunil I. Jayakar, for the petitioner.

Mrs Neeta Karnik, for respondent no.1.

Mrs M.P.Thakur, AGP for the State.

CORAM : V.G.PALSHIKAR & D.B.BHOSALE,JJ.

DATE : 5th September, 2005.

PC:

1. Heard learned counsel for the parties.

2. By this petition, the petitioner has made the following prayers.

> (a) That this Hon'ble Court will be pleased to order and issue a writ of certiorari or any other appropriate writ order and direction and quash

the order of the 1st respondents dated 28th February 2002 at Exhibit "D" annexed to the petition.

(b) That this Hon'ble Court will be pleased to issue a writ of mandamus or any other appropriate writ, order and direction against the respondents directing them not to deduct the amount of the alleged penal rent at the rate of Rs.8000/- pm from the petitioner's salary and a further writ of mandamus or any other appropriate writ, order and direction to the respondents to reimburse to the petitioner the amounts deducted as and by way of alleged penal rent @ Rs.8000/- p.m. with effect from May, 2003.

(c) That pending the hearing and final disposal of this petition, this Hon'ble Court will be pleased to stay the operation of the order of the 1st respondents vide their letter dated 28th February 2002 at Exhibit "D" to this petition which contemplates the recovery of the alleged penal rent @ Rs.10/- per sq.ft for the carpet area of 458.6 sq ft recoverable from the petitioner for the period from September 1997 to February 2002 to Rs.2,47,644/-;

(d) Ad-interim reliefs in terms of prayer clause (c) above be granted."

3. The petitioner was an employee of the respondent-corporation and was transferred out of Bombay. Therefore, on 26.11.1990, a communication was addressed to the petitioner by the Superintending Engineer of the Corporation pointing out to him that though a period of three years and six months has elapsed after the transfer of the petitioner, he has retained the quarters bearing no.C 6/6-4:3. By this communication, it was specifically told to him that

appropriate action would be taken against him and he should explain why he has retained the possession. The explanation was tendered in which certain difficulties were pointed out and ultimately it was prayed by the communication of 6.12.1999 that he, in view of his family difficulties, be permitted to retain the quarters till the end of May,2000. On the specious ground that there is no communication in reply to this, the petitioner continued to occupy the quarters for three years after May 2000. The only ground for not vacating the quarters is that there is no reply to a communication dated 6.12.1999. It is also contended that several quarters of the respondents are lying vacant and yet the petitioner was asked to quit the same. It, therefore, amounts to discrimination between identically situate employees. The contention is also raised that the eviction of the petitioner is without offering an opportunity to show cause. Each of the contentions is liable to be rejected. The communication dated 26.11.1999 does call upon the petitioner to explain why he has retained the quarters over the permissible limit. He has explained it and requested that he be allowed to retain the quarters till May, 2000 and, therefore, he has continued in possession of the quarters though he was not entitled to retain for three

years and more. Inspite of this, all that has been done by the respondent-corporation is to recover standard rent or penal rent from the petitioner. The petitioner had an adequate remedy of filing a civil suit and proving all these, including fraud played by the Corporation, however, on a specious ground that writ
jurisdiction is also maintainable, this petition is filed.

4. The jurisdiction under Article 226 is an extra ordinary jurisdiction vested in this Court to alleviate injustice done to persons who, inspite of diligence, are deprived of justice. The scope undoubtedly is unlimited and in a suitable case this Court can interfere even if an alternate remedy exists. In our opinion, the present case is a case where we refuse to exercise our jurisdiction which is discretionary in favour of a person who continues to retain the government quarters and thereafter refuses to pay penal interest. To exercise the writ jurisdiction in favour of such person would, in our opinion, be misuse of our jurisdiction which we refuse to do. The writ petition is dismissed.

(D.B.BHOSALE, J.) (V.G.PALSHIKAR, J.)